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81-2034

No.

IN THE
SUPREME COURT OF THE UNITED STATES

ALLEGHENY COUNTY SCHOOL BOARD
and ALLEGHENY INTERMEDIATE
UNIT BOARD OF SCHOOL DIRECTORS,

Petitioners,

v.

DOROTHY HOOTS, et al.,

Respondents.

On Petition for Certiorari to the
United States Court of Appeals
for the Third Circuit

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Allegheny County School Board and
Allegheny Intermediate Unit Board
of School Directors

QUESTIONS PRESENTED

1. Does a difference in racial mix in the student bodies of adjacent independent school districts constitute a violation of the Equal Protection Clause?

2. Is there a violation of the Equal Protection Clause when there is no substantial evidence of discriminatory intent to segregate on the part of the State or of Petitioners?

3. May a district court impose a consolidation of independent school districts on a school district that played no part in the cause or effect of the alleged constitutional violation?

4. Is it a violation of due process for a district court to conduct the liability phase of a case charging

violation of the Fourteenth Amendment without requiring joinder of autonomous, independent school districts, whose boundaries may be affected even though motions to do so were timely made by original State defendants?

LIST OF PARTIES

Other parties to the proceeding in the United States Court of Appeals but not listed in this caption are:

(a) Plaintiffs in the district court and appellees below: JANELLE HOOTS and JAMIE HOOTS; MRS. ADDRALLACE KNIGHT, individually and as mother and natural guardian of her children RONALD KNIGHT, LORETTA KNIGHT, TERRANCE KNIGHT, MARC KNIGHT and BYRON KNIGHT; BARBARA SMITH, individually and as mother and natural guardian of her children TAWNADA SMITH, TEVELA SMITH, JOSEPH SMITH, WESLEY SMITH and ERIC SMITH; on behalf of themselves and all others similarly situated; MAE HELEN WOODY; and JUANITA JORDAN.

(b) Defendants in the district

court and appellants below: COMMONWEALTH OF PENNSYLVANIA; EDWARD X. HALLENBERG, President of the Allegheny County Board of School Directors; W. DEMING LEWIS, Chairman of the Pennsylvania State Board of Education; EDWARD X. HALLENBERG, President of the Allegheny Intermediate Board of School Directors; and THE PENNSYLVANIA STATE BOARD OF EDUCATION.

(c) By order of court dated May 16, 1979, EAST ALLEGHENY SCHOOL DISTRICT; GATEWAY SCHOOL DISTRICT; STEEL VALLEY SCHOOL DISTRICT were joined as defendants by the district court for remedial purposes; these four districts were dismissed April 23, 1981 and March 5, 1981.

(d) By order of court dated February 27, 1979, the GENERAL BRADDOCK SCHOOL DISTRICT was joined as defendant for remedial purposes; it is appellee below. (N.B. It was an original defendant but by court order was dismissed September 3, 1971).

(e) By order of court dated May 16, 1979, SWISSVALE AREA SCHOOL DISTRICT; CHURCHILL AREA SCHOOL DISTRICT; TURTLE CREEK AREA SCHOOL DISTRICT; and EDGEWOOD SCHOOL DISTRICT were joined as defendants by the district court for remedial purposes; they are appellants below.

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TABLE OF AUTHORITIES

Arlington Heights v. Metropolitan Housing Corporation, 429 U.S. 252 (1977).

Armour v. Nix, Civil No. 16708 (N.D. GA 1979). arf'd, 446, U.S. 930 (1980).

Bradley v. School Board of City of Richmond, Virginia, 462 F. 2d 1058 aff'd 412 U.S. 92 (1972).

City of Memphis v. Greene, 49 U.S.L.W. 4389 (1981).

Husbands v. Commonwealth of Pennsylvania, 395 F. Supp. 1107 (1973).

Keyes v. School District No. 1 Denver, Colo., 413 U.S. 189 (1973).

Milliken v. Bradley II, 433 U.S. 267 (1977).

Milliken v. Bradley I, 418 U.S. 717 (1974).

Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979).

Spencer v. Kugler, 326 F. Supp. 1235 (D.N.J. 1971), aff'd, 404 U.S. 1027 (1972).

Wright v. Council of City of Emporia, 407 U.S. 451, 464 (1972).

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v.

DOROTHY HOOTS, et al.,

Respondents.

ON PETITION FOR CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Petitioners respectfully request that a writ of certiorari issue from this Court to review the judgment of the United States Court of Appeals for the Third Circuit in the above-encaptioned cause.

OPINIONS BELOW

JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioners adopt as their own, where applicable, the pages of the concurrent Petition of Churchill Area School District setting forth the opinion below, the jurisdiction asserted and the constitutional and statutory provisions involved.

STATEMENT OF CASE

Petitioners adopt as their own the "Statement of the Case" filed by Churchill (and its Appendix) in its concurrent Petition for Certiorari to the same judgment of the United States Court of Appeals for the Third Circuit.

REASONS FOR GRANTING THIS PETITION

Petitioners adopt as their own, where applicable, the "Reasons for Granting the Writ" filed by Churchill.

In supplement thereto, Petitioners draw attention to the cases whose teachings are in direct confliect with the rulings in this case:

Ir 1981, City of Memphis v. Greene, 49 U.S.L.W. 4389;

In 1979, Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256;

In 1977, Arlington Heights v. Metropolitan Housing Corporation, 429 U.S. 252;

In 1977, Milliken v. Bradley II,

433 U.S. 267;

In 1974, Milliken v. Bradley I, 418 U.S. 717;

In 1973, Keyes v. School District No. 1 Denver, Colo., 413 U.S. 189 and by Husbands v. Commonwealth of Pennsylvania, 395 F. Supp. 1107;

In 1972, Bradley v. School Board of City of Richmond, Virginia, 462 F. 2d 1058 aff'd 412 U.S. 92;

Wright v. Council of City of Emporia, 407 U.S. 451, 464 (1972);

Spencer v. Kugler, 326 F. Supp. 1235 (D.N.J. 1971), aff'd, 404 U.S. 1027 (1972). Approved Armour v. Nix, Civil No. 16708 (N.D. GA 1979). aff'd, 446, U.S. 930 (1980).

It has not been proved that Petitioners discriminated or otherwise committed a constitutional violation. The quality and quantity of specific, substantial evidence of invidious, deliberate intent and purpose to discriminate on the basis of race is absent. Proof or disparate effect is not enough, especially when the disparate effect was reduced when the independent school districts of Braddock (57% black), North Braddock (20% black) and Rankin (76% black) were consolidated in 1971 to produce General Braddock (40% black). That a

further reduction might have been desirable, or more satisfying to a Federal Judge, does not meet the constitutional evidentiary tests of the foregoing cases.

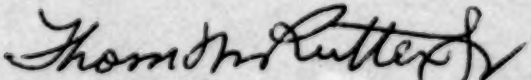
The failure to require joinder (prior to the liability phase) of surrounding, autonomous, independent school districts violates their due process rights as forcefully implied by Milliken I.

CONCLUSION

The decision below that establishes disparity of racial composition between districts, that eliminates the requirement of substantial evidence

of segregatory intent, that imposes an arbitrary remedy of consolidation on a school district totally removed from whatever violation might be found here, flies directly in the face of the rulings of this Court and will establish a precedent that presages innumerable suits of a similar nature. It should be reversed by this Court. Certiorari should be granted to accomplish this reversal.

Respectfully submitted,



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